

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: LITHIUM ION BATTERIES
ANTITRUST LITIGATION

Case No.: 13-MD-2420 YGR

ORDER SETTING BRIEFING LIMITS AND
SCHEDULE

This Order Relates to:

**All Indirect Purchaser and Direct
Purchaser Actions**

On July 18, 2013, the Court ordered the parties in this action to submit letter briefs previewing the issues and key authorities on which Defendants¹ plan to base motions to dismiss the respective Consolidated Amended Complaints filed by the Direct Purchaser Plaintiff (DPP) and Indirect Purchaser Plaintiff (IPP) putative classes, and on which the DPPs and IPPs plan to base their respective oppositions. Dkt. No. 246. The Court's Order contemplated the potential for phased briefing, and the establishment, if necessary, of a schedule and page limits for briefing.

The Court has received and considered the parties' letter briefs, which the Court found informative and useful. Dkt. Nos. 258 (Defs. Ltr.), 268 (DPP Ltr.), 269 (IPP Ltr.). The Court **HEREBY ORDERS** briefing within the limits and on the schedule set forth below.

I. ISSUES THAT MAY BE CONSIDERED

The numerous issues raised in Defendants' letter brief are best addressed in phases. Depending on how the Court rules on certain issues, other issues may be mooted or substantially

¹ Herein, "Defendants" refers to: Hitachi Maxell, Ltd., Maxell Corporation of America, LG Chem, Ltd., LG Chem America, Inc., Panasonic Corporation, Panasonic Corporation of North America, SANYO Electric Co., Ltd., SANYO North America Corporation, Samsung SDI Co., Ltd., Samsung SDI America, Inc., Sony Corporation, Sony Electronics, Inc., and Sony Energy Devices Corporation.

simplified. Further, the litigation may be able to proceed as to some states while the next phase of briefing can address state-specific concerns. Accordingly, for the present round of briefing, the Court limits the issues that may be considered to the following:

- Whether the conspiracy claims set forth in the DPPs' Consolidated Amended Complaint are sufficiently pled under *Twombly*. Defs. Ltr. § I.A.1.
- Whether the DPPs may bring federal antitrust claims involving finished products containing the allegedly price-fixed batteries under *Illinois Brick*. *Id.* § I.A.2.
- Whether the DPPs allege sufficiently specific facts to state a claim for fraudulent concealment under Federal Rule of Civil Procedure 9(b). *Id.* § I.A.3.
- Whether the conspiracy claims set forth in the IPPs' Consolidated Amended Complaint are sufficiently pled under *Twombly*. *Id.* § I.B.1.
- Whether the IPPs allege sufficiently specific facts to state a claim for fraudulent concealment under Federal Rule of Civil Procedure 9(b). *Id.* § I.B.4.
- Any issues of *pleading sufficiency* which (i) are specific to a separate defendant group of related companies and (ii) do not duplicate arguments made in the joint motions. *See id.* § I.D.

II. PAGE LIMITS AND SCHEDULE FOR PHASE I BRIEFING


Given the reduced scope of the issues that may be briefed during this phase, the Court determines that extending the page limits set forth in the Local Rules is not warranted. Defendants' joint motions and the briefs responsive thereto shall comply with the page limits and other requirements set forth in Civil Local Rule 7 unless superseded by this Order; i.e., Defendants' opening joint briefs shall not exceed twenty-five (25) pages each, the DPP and IPP oppositions shall not exceed twenty-five (25) pages each, and Defendants' replies shall not exceed fifteen (15) pages each.

The individual motions to dismiss outlined in Section D of Defendants' letter brief shall not exceed seven (7) pages each. The respective plaintiff groups' responses shall not exceed seven (7) pages each, and any reply shall not exceed four (4) pages.

1 Defendants shall file and serve all of the motions permitted by this Order no later than
2 Monday, September 16, 2013. The DPPs and IPPs shall file and serve any responses no later than
3 Wednesday, October 16, 2013. Any reply to an opposition shall be filed and served no more than
4 twenty-one (21) days after the opposition is filed and served. To the extent necessary, the motions
5 shall be heard at **10:00 a.m. on Friday, December 6, 2013**, in Courtroom 5, Federal Courthouse,
6 1301 Clay Street, Oakland, California.

7 **IT IS SO ORDERED.**

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9 Dated: August 26, 2013

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11 YVONNE GONZALEZ ROGERS
12 UNITED STATES DISTRICT COURT JUDGE
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